ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
WENDELL L. GRIFFEN, JUDGE

DIVISION III

CACR07-898

March 12, 2008

RICQUAN THOMAS APPELLANT	AN APPEAL FROM PULASKI COUNTY CIRCUIT COURT [CR2006-2528]
V.	HON. JOHN W. LANGSTON, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

Ricquan Thomas appeals from his conviction for first-degree battery. He argues that the trial court erred in denying his motion for a directed verdict because the State failed to prove that he acted with the requisite mental state or performed any requisite act to convict him either as a principal or as an accomplice. He further asserts that the trial court erred in issuing a jury instruction on accomplice liability. We hold that the trial court committed no error, and thus, we affirm appellant's conviction.

I. Facts

Appellant and co-defendant, William Belmont, were tried jointly before a jury, each charged with the first-degree battery of Chris Wilson. It is undisputed that Belmont attacked Wilson on May 17, 2006, after Wilson told Belmont that he could not repay Belmont $150 that Wilson borrowed from him. It is also undisputed that appellant voluntarily joined the fight, during which Wilson suffered five stab wounds.

On the evening of May 17, appellant and Otis Williams accompanied Belmont to

Wilson's apartment so that Belmont could recover the money that Wilson owed him. Williams testified that he and appellant accompanied Belmont as a "safety precaution" because there was "[n]o telling what could happen." Williams thought that trouble might ensue if Wilson did not repay the money.

Wilson was outside of the apartment of a neighbor, Tyrone Barrow. While appellant and Williams remained in the car, Belmont went to Wilson's apartment. He then saw Wilson at Barrow's. When Wilson told Belmont that he did not have the money to repay him, the two men argued. Both Wilson and Williams testified that Belmont threw the first punch and that appellant joined the fight without Belmont's request. According to Wilson, appellant approached him from behind and stayed behind him during the scuffle. Barrow could not identify appellant as the man who joined the fight but he testified that the man who joined the fight came up from behind Wilson.

The fight lasted approximately five minutes. Wilson was not immediately aware that he had been stabbed. However, at some point after appellant joined the fight, Wilson heard air escaping from his chest. None of the witnesses saw appellant or Belmont with a knife. No knife or other weapon was recovered at the scene. Nonetheless, Williams told police in a sworn statement that when appellant returned to the vehicle after the fight, he told Williams that he stabbed Wilson.

Officer Thomas Mayberry testified that appellant initially denied being present during the attack and gave the police a false alibi, stating that he was with his girlfriend. Thomas said that Belmont also gave police a false statement, asserting that only he and a man named "Nelly" went to Wilson's apartment, and that Nelly stabbed Wilson.

Wilson suffered five stab wounds: three to the chest, which tore a hole in his diaphragm and caused his left lung to collapse; one under his right arm; and one to the buttocks area, which damaged his rectum, requiring him to wear a colostomy bag. He was

hospitalized for one month and was in intensive care for three weeks. Dr. John Michael Stair, who performed the surgery on appellant's chest, testified that all of the injuries were caused by a knife or other sharp object, and that the chest and rectal injuries were life-threatening. He characterized the wound to the buttocks as "a very deep wound." Dr. Stair further testified that Wilson suffered permanent scarring as a result of his injuries.

During the trial, appellant moved for a directed verdict, challenging the State's proof regarding his liability as an accomplice. The trial court denied the motion and the subsequent renewal thereof. Appellant also objected to the accomplice-liability jury instruction issued, essentially arguing that the facts did not support such an instruction because he did not encourage or aid in the commission of the offense. The trial court overruled the objection and submitted the instruction.

The jury found both appellant and Belmont guilty. Appellant received no prison sentence but was ordered to pay a $5000 fine and restitution of $20,000.

II. Sufficiency of the Evidence

Appellant now argues that the State failed to present sufficient evidence to support the conclusion that he was the principal actor or an accomplice. His argument that the State failed to prove that he was the principal actor fails, first, because he did not raise it to the trial court. *See Stewart v. State*, 320 Ark. 75, 894 S.W.2d 930 (1995).

Second, this argument is simply misplaced, as there is no distinction under Arkansas law between principals and accomplices. *See Wilson v. State,* 365 Ark. 664, 232 S.W.3d 455 (2006). Thus, when two or more persons assist one another in the commission of a crime, each is an accomplice and is liable for the conduct of both. *See* Ark. Code Ann. § 5-2-403(a)(2) (Repl. 2006); *Grillot v. State*, 353 Ark. 294, 107 S.W.3d 136 (2003).[1]

[1]In arguing that the State failed to prove that he acted as the principal, appellant challenges the proof that he purposely caused serious physical injury or that he caused serious physical injury by means of a knife. We note that appellant's or Belmont's intent

Accordingly, we turn to appellant's argument that the trial court erred in denying his motion for a directed verdict because the State failed to prove that he acted as an accomplice. A motion for a directed verdict is a challenge to the sufficiency of the evidence. *See Thomas v. State*, 92 Ark. App. 425, 214 S.W.3d 863 (2005). On appeal from the denial of a motion for a directed verdict, the sufficiency of the evidence is tested to determine whether the verdict is supported by substantial evidence, direct or circumstantial. *Id.* Substantial evidence is that evidence which is of sufficient force and character to compel a conclusion one way or the other beyond suspicion or conjecture. *Id.* Circumstantial evidence may support a conviction, but it must be consistent with the defendant's guilt and inconsistent with any other reasonable conclusion. *Id.* We consider only the evidence supporting the guilty verdict, and the evidence is viewed in the light most favorable to the State. *Id.* Determinations of credibility are left to the jury. *Id.*

In cases where the theory of accomplice liability is implicated, we affirm a sufficiency of the evidence challenge if substantial evidence supports that the defendant acted as an accomplice in the commission of the alleged offense. *See Cook v. State*, 350 Ark. 398, 86 S.W.3d 916 (2002). An accomplice is defined by Ark. Code Ann. § 5-2-403 as follows:

> (a) A person is an accomplice of another person in the commission of an offense if, with the purpose of promoting or facilitating the commission of an offense, the person:
>
> (1) Solicits, advises, encourages, or coerces the other person to commit the offense;
>
> (2) Aids, agrees to aid, or attempts to aid the other person in planning or committing the offense; or

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may be inferred from the type of weapon used, the manner of its use, and the nature, extent, and location of the injuries. *See Robinson v. State*, 353 Ark. 372, 108 S.W.3d 622 (2003). Here, appellant and Belmont "double-teamed" Wilson, attacking him from both the front and the back, effectively cutting off any means of escape. Wilson was stabbed a total of five times over a five-minute period, which would negate any argument that the wounds were accidentally inflicted. Additionally, Dr. Stair's testimony provided substantial evidence that a knife caused the injuries and that the injuries were life-threatening.

(3) Having a legal duty to prevent the commission of the offense, fails to make a proper effort to prevent the commission of the offense.

(b) When causing a particular result is an element of an offense, a person is an accomplice of another person in the commission of that offense if, acting with respect to that particular result with the kind of culpable mental state sufficient for the commission of the offense, the person:

(1) Solicits, advises, encourages, or coerces the other person to engage in the conduct causing the particular result;

(2) Aids, agrees to aid, or attempts to aid the other person in planning or engaging in the conduct causing the particular result; or

(3) Having a legal duty to prevent the conduct causing the particular result, fails to make a proper effort to prevent the conduct causing the particular result.

Factors relevant in determining whether a person is an accomplice include the presence of the accused near the crime, the accused's opportunity to commit the crime, and association with a person involved in the crime in a manner suggestive of joint participation. *See Hutcheson v. State*, 92 Ark. App. 307, 213 S.W.3d 25 (2005). It is well-settled that a participant cannot disclaim accomplice liability simply because he did not personally take part in every act that made up the crime as a whole. *See Wilson v. State*, 365 Ark. 664, 232 S.W.3d 455 (2006). Rather, when two or more persons assist one another in the commission of a crime, each is an accomplice and is liable for the conduct of both. *See* Ark. Code Ann. § 5-2-402(a)(2); *Grillot*, *supra*. Thus, a defendant may be found guilty based on the conduct of his accomplice. *See Cook, supra.*

A person commits first-degree battery if, with the purpose of causing serious physical injury to another person, the person causes serious physical injury to any person by means of a deadly weapon. Ark. Code Ann. § 5-13-201(a)(1) (Supp. 2007). Appellant maintains that the State proved only that Wilson suffered serious physical injuries that "could have been caused by a sharp object or a knife." He argues that his "mere presence at a site where a victim incurred a knife wound does not, without additional evidence, transform him into an accomplice." Appellant asserts that a finding that he is an accomplice on the facts of this case

requires speculation or conjecture.

We disagree, and are persuaded that appellant's conduct is akin to the defendant's conduct in *Blann v. State*, 15 Ark. App. 364, 695 S.W.2d 382 (1985). The *Blann* court affirmed the defendant's conviction for being an accomplice to second-degree battery, where the defendant heard the battery being planned, drove his co-defendant son where the intended victim was found, encouraged his son to fight the victim, and where the son ultimately stabbed the victim. Notably, the *Blann* court determined that whether the defendant knew that his son had a knife and intended to use it was irrelevant.

Like the *Blann* defendant, appellant was not merely present and did not merely decide to join an ongoing fist-fight. Rather, he actively encouraged and assisted Belmont in committing the offense in a manner that established joint participation. He accompanied Belmont to Wilson's apartment, knowing Belmont's purpose for going there and in anticipation of trouble if Wilson did not "pay up." In fact, after Belmont attacked Wilson, appellant joined the fracas, of his own accord, and began striking Wilson from behind, effectively preventing Wilson from escaping. At some point, Wilson was stabbed from behind.

As in *Blann*, it is irrelevant whether appellant here knew that Belmont had a knife or knew that the fist-fight would escalate into a knife-fight. Either appellant stabbed Wilson, or else he made it more difficult, if not impossible, for Wilson to escape, thus providing Belmont the opportunity to stab him. Further, appellant lied to the police about his involvement, which the jury was allowed to infer as evidence of his guilt. *See Brenk v. State,* 311 Ark. 579, 847 S.W.2d 1 (1993). Accordingly, we affirm appellant's conviction.

III. Jury Instruction

Appellant also argues that the trial court erred in issuing an accomplice-liability instruction because it was an incorrect statement of the law and because there was no rational

basis for issuing it. More specifically, he asserts that 1) the trial court should have used an instruction that mirrored Ark. Code Ann. § 5-2-403(b) instead of Ark. Code Ann. § 5-2-403(a); 2) the instructions that were given allowed the jury to find that both defendants were guilty as accomplices without finding that either was guilty as a principal; and 3) there was no basis for issuing an accomplice-liability instruction.

Appellant's first two arguments are not preserved for appellate review because he did not raise them to the trial court – he did not argue that the accomplice-liability instruction should mirror Ark. Code Ann. § 5-2-403(b), and he did not proffer another instruction. We will not address objections concerning jury instructions that were not first presented to the trial court and where no proffer of another instruction was made. *See Willis v. State*, 334 Ark. 412, 977 S.W.2d 890 (1998).

Second, appellant did not object that the instructions allowed the jury to find that he and Belmont were both accomplices without finding that either was a principal. Not only was this objection not raised, but any such objection would have been properly overruled because co-defendants may each be found guilty as accomplices. *See* Ark. Code Ann. § 5-2-403(a)(2); *Grillot*, *supra*.

Finally, appellant's argument that there was no basis for issuing an accomplice-liability instruction is unpersuasive. A party is entitled to a jury instruction when it is a correct statement of the law and where there is some basis in the evidence to support giving the instruction. *See Barnes v. Everett*, 351 Ark. 479, 95 S.W.3d 740 (2003). We will not reverse a trial court's refusal to give a proffered instruction unless there was an abuse of discretion. *Id*.

Here, the trial court did not err in submitting the accomplice-liability instruction. Appellant did not object below that the instruction issued was an incorrect statement of the law; the instruction, as abstracted, appears to be a correct statement of the law, specifically,

Ark. Code Ann. § 5-2-403(a). Further, there was a rational basis for issuing the instruction. Essentially, the same evidence supporting appellant's conviction for first-degree battery provided a rational basis for issuing the accomplice-liability instruction.

Affirmed.

VAUGHT and BAKER, JJ., agree.